

AMENDED IN SENATE MAY 7, 2003

SENATE BILL

No. 253

Introduced by Senator Cedillo

February 18, 2003

An act to amend Sections 3540.1, ~~3543.4~~, 3544.1, and 3544.7 of, ~~and to add Section 3543.10 to~~, the Government Code, relating to public school employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 253, as amended, Cedillo. Public school employees: confidential employees: employee organizations.

Under existing law, public school employees have the right to form, join, and participate in activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Existing law excludes a confidential employee from the definition of "public school employee" or "employee." Existing law defines the term "confidential employee" to mean any employee who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations. ~~Existing law prohibits a person serving in a confidential position from being represented by an exclusive representative and does not permit those persons or their representatives to meet and negotiate with the public school employer.~~

~~This bill would delete confidential employees from the exception to the definition of "public school employee" or "employee" and would remove confidential employees from the above prohibitions. The bill would prohibit a confidential employee who is member of an employee organization that includes as members employees who are not confidential employees from serving as an officer of that organization,~~

~~serving on a committee of that organization that deals with areas within the scope of representation, or serving as a representative of that organization before a public school employer~~ *revise the definition of “confidential employee” to mean any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of management positions.*

Existing law provides that an employee organization may become the exclusive representative for the employees of an appropriate unit for purposes of meeting and negotiating by filing a request with the public school employer and asking the public school employer to recognize it as the exclusive representative. Existing law requires the public school employer to grant the request for recognition, unless, among other things, the public school employer desires that a representation election be conducted.

This bill would delete the authority of a public school employer to withhold ~~regulation~~ *recognition* of an employee organization by requiring that a representation election be conducted. The bill, in addition, would make conforming and related changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3540.1 of the Government Code is
2 amended to read:

3 3540.1. As used in this chapter:

4 (a) “Board” means the Public Employment Relations Board
5 created pursuant to Section 3541.

6 (b) “Certified organization” or “certified employee
7 organization” means an organization which has been certified by
8 the board as the exclusive representative of the public school
9 employees in an appropriate unit after a proceeding under Article
10 5 (commencing with Section 3544).

11 ~~(c) “Confidential employee” means any employee who, in the~~
12 ~~regular course of his or her duties, has access to, or possesses~~
13 ~~information relating to, his or her employer’s employer-employee~~
14 ~~relations.~~

1 (c) “Confidential employee” means any employee who is
2 required to develop or present management positions with respect
3 to employer-employee relations or whose duties normally require
4 access to confidential information that is used to contribute
5 significantly to the development of management positions.

6 (d) “Employee organization” means any organization which
7 includes employees of a public school employer and which has as
8 one of its primary purposes representing those employees in their
9 relations with that public school employer. “Employee
10 organization” shall also include any person ~~such as~~ of the
11 organization ~~authorizes~~ authorized to act on its behalf.

12 (e) “Exclusive representative” means the employee
13 organization recognized or certified as the exclusive negotiating
14 representative of certificated or classified employees in an
15 appropriate unit of a public school employer.

16 (f) “Impasse” means that the parties to a dispute over matters
17 within the scope of representation have reached a point in meeting
18 and negotiating at which their differences in positions are so
19 substantial or prolonged that future meetings would be futile.

20 (g) “Management employee” means any employee in a
21 position having significant responsibilities for formulating district
22 policies or administering district programs. Management
23 positions shall be designated by the public school employer
24 subject to review by the Public Employment Relations Board.

25 (h) “Meeting and negotiating” means meeting, conferring,
26 negotiating, and discussing by the exclusive representative and the
27 public school employer in a good faith effort to reach agreement
28 on matters within the scope of representation and the execution, if
29 requested by either party, of a written document incorporating any
30 agreements reached, which document shall, when accepted by the
31 exclusive representative and the public school employer, become
32 binding upon both parties and, notwithstanding Section 3543.7, is
33 not subject to subdivision 2 of Section 1667 of the Civil Code. The
34 agreement may be for a period of not to exceed three years.

35 (i) “Organizational security” is within the scope of
36 representation, and means either of the following:

37 (1) An arrangement pursuant to which a public school
38 employee may decide whether or not to join an employee
39 organization, but which requires him or her, as a condition of
40 continued employment, if he or she does join, to maintain his or

1 her membership in good standing for the duration of the written
2 agreement. However, ~~no such arrangement shall~~ *an arrangement*
3 *may not* deprive the employee of the right to terminate his or her
4 obligation to the employee organization within a period of 30 days
5 following the expiration of a written agreement.

6 (2) An arrangement that requires an employee, as a condition
7 of continued employment, either to join the recognized or certified
8 employee organization, or to pay the organization a service fee in
9 an amount not to exceed the standard initiation fee, periodic dues,
10 and general assessments of the organization for the duration of the
11 agreement, or a period of three years from the effective date of the
12 agreement, whichever comes first.

13 (j) “Public school employee” or “employee” means any
14 person employed by any public school employer except persons
15 elected by popular vote, persons appointed by the Governor of this
16 state, ~~and~~ management employees, *and confidential employees*.

17 (k) “Public school employer” or “employer” means the
18 governing board of a school district, a school district, a county
19 board of education, a county superintendent of schools, or a charter
20 school that has declared itself a public school employer pursuant
21 to subdivision (b) of Section 47611.5 of the Education Code.

22 (l) “Recognized organization” or “recognized employee
23 organization” means an employee organization which has been
24 recognized by an employer as the exclusive representative
25 pursuant to Article 5 (commencing with Section 3544).

26 (m) “Supervisory employee” means any employee, regardless
27 of job description, having authority in the interest of the employer
28 to hire, transfer, suspend, lay off, recall, promote, discharge,
29 assign, reward, or discipline other employees, or the responsibility
30 to assign work to and direct them, or to adjust their grievances, or
31 effectively recommend ~~such~~ *that* action, if, in connection with the
32 foregoing functions, the exercise of that authority is not of a
33 merely routine or clerical nature, but requires the use of
34 independent judgment.

35 ~~SEC. 2. Section 3543.4 of the Government Code is amended~~
36 ~~to read:~~

37 ~~3543.4. A person serving in a management position or senior~~
38 ~~management position may not be represented by an exclusive~~
39 ~~representative. Any person serving in such a position may~~
40 ~~represent himself or herself individually or by an employee~~

~~organization whose membership is composed entirely of employees designated as holding those positions, in his or her employment relationship with the public school employer, but, in no case, shall such an organization meet and negotiate with the public school employer. A representative may not be permitted by a public school employer to meet and negotiate on any benefit or compensation paid to persons serving in a management position or senior management position.~~

~~SEC. 3.~~ Section 3543.10 is added to the Government Code, to read:

~~3543.10. A confidential employee who is a member of an employee organization that includes as members employees who are not confidential employees may not serve as an officer of that employee organization, serve on a committee of that employee organization that deals with areas within the scope of representation, or serve as a representative of that employee organization before a public school employer.~~

~~SEC. 4.~~

~~SEC. 2.~~ Section 3544.1 of the Government Code is amended to read:

~~3544.1. The public school employer shall grant a request for recognition filed pursuant to Section 3544, unless any of the following apply:~~

~~(a) The public school employer doubts the appropriateness of a unit.~~

~~(b) Another employee organization either files with the public school employer a challenge to the appropriateness of the unit or submits a competing claim of representation within 15 workdays of the posting of notice of the written request. The claim shall be evidenced by current dues deductions authorizations or other evidence such as notarized membership lists, or membership cards, or petitions signed by employees in the unit indicating their desire to be represented by the organization. The evidence shall be submitted to the board, and shall remain confidential and not be disclosed by the board. The board shall obtain from the employer the information necessary for it to carry out its responsibilities pursuant to this section and shall report to the employee organizations seeking recognition and to the public school employer as to the adequacy of the evidence. If the claim is evidenced by the support of at least 30 percent of the members of~~

1 an appropriate unit, a question of representation exists and the
2 board shall conduct a representation election pursuant to Section
3 3544.7, unless subdivision (c) or (d) of this section applies.

4 (c) There is currently in effect a lawful written agreement
5 negotiated by the public school employer and another employee
6 organization covering any employees included in the unit
7 described in the request for recognition, unless the request for
8 recognition is filed less than 120 days, but more than 90 days, prior
9 to the expiration date of the agreement.

10 (d) The public school employer has, within the previous 12
11 months, lawfully recognized another employee organization as the
12 exclusive representative of any employees included in the unit
13 described in the request for recognition.

14 ~~SEC. 5.—~~

15 *SEC. 3.* Section 3544.7 of the Government Code is amended
16 to read:

17 3544.7. (a) Upon receipt of a petition filed pursuant to
18 Section 3544.3 or 3544.5, the board shall conduct inquiries and
19 investigations or hold any hearings it deems necessary in order to
20 decide the questions raised by the petition. The determination of
21 the board may be based upon the evidence adduced in the inquiries,
22 investigations, or hearing. However, if the board finds on the basis
23 of the evidence that a question of representation exists, or a
24 question of representation exists pursuant to subdivision (b) of
25 Section 3544.1, it shall order that an election be conducted by
26 secret ballot and it shall certify the results of the election on the
27 basis of which ballot choice received a majority of the valid votes
28 cast. There shall be printed on each ballot the statement: “no
29 representation.” No voter shall record more than one choice on his
30 or her ballot. Any ballot upon which there is recorded more than
31 one choice shall be void and shall not be counted for any purpose.
32 If at any election no choice on the ballot receives a majority of the
33 votes cast, a runoff election shall be conducted. The ballot for the
34 runoff election shall provide for a selection between the two
35 choices receiving the largest and second largest number of valid
36 votes cast in the election.

37 (b) An election may not be held and the petition shall be
38 dismissed if either of the following exist:

39 (1) There is currently in effect a lawful written agreement
40 negotiated by the public school employer and another employee

1 organization covering any employees included in the unit
2 described in the request for recognition, or unless the request for
3 recognition is filed less than 120 days, but more than 90 days, prior
4 to the expiration date of the agreement.

5 (2) The public school employer has, within the previous 12
6 months, lawfully recognized an employee organization other than
7 the petitioner as the exclusive representative of any employees
8 included in the unit described in the petition.

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